

Insecure Institutions:
A Survivalist Theory of Judicial Manipulation in Latin America

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Abstract

Most theories of judicial politics are built around explaining the puzzle of judicial independence. This paper instead theorizes explicitly about the conditions under which politicians are prone to manipulate their courts. By arguing that courts can partly endogenously shape leaders' fate at the hands of legislative opponents, we argue that greater political insecurity leads presidents to gut judicial independence, not shore it up. Drawing on a novel dataset of judicial crises across eighteen Latin American countries between 1985 and 2008, we show that variation in judicial crises is systematically correlated with the president's risk of instability as captured by anti-governmental protests, the history of past presidential instability, presidential power, and divided government. To identify whether the effects of protest on judicial manipulation are causal, we develop a new index of commodity prices keyed to each country. By treating institutional crises as inter-connected strategic decisions, this paper cuts against the tendency in the literature to treat these phenomena along parallel tracks; with one literature on presidential crises and another on judicial politics. Rather, constitutional hardball in all of its manifestations should be studied under a unified theoretical framework.

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With his poll numbers plummeting, many Venezuelans are wondering whether Maduro will keep his job and what tricks he'll need to pull to do so. One thing is clear: Whatever he does, the country's Supreme Court will be there to rubber-stamp it.¹

Imagine a leader who wants to mitigate the risks of losing power. Under standard theories of democracy, such leaders should work hard to please their citizens by delivering on their campaign promises, encouraging economic prosperity, providing basic security, and the like. And, to the extent that citizens value democratic institutions and the rule of law, a leader who wishes to remain in power should respect the limits that institutions, such as independent courts, place on their power. This is one version of how liberal democracies become self-enforcing.²

Yet, we can also imagine a leader who wants to remain in office, but chooses a very different path. This leader may also be fairly elected, but then clings to power by undermining other liberal democratic institutions.³ When it comes to the courts, this leader appreciates the value of friendly judges willing to rubberstamp policies that violate the constitution. But, more importantly, she also comes to rely on the court both to exercise forbearance for transgressions committed by the president's supporters, while also deploying the full extent of the law's power to harass the president's opponents.⁴ The larger the threat of losing office looms, and the more a leader believes the court can help ameliorate that risk, the more attractive capturing and weaponizing the court becomes. Under this scenario, it is the fear of political instability that fundamentally drives judicial instability.

The idea that strongmen (or would-be strongmen) beget weak courts is well-known. Writing about Latin America, Guillermo O'Donnell coined the term "delegative democracy" to

characterize popularly-elected presidents who refuse to countenance checks on their power.⁵ Yet although O'Donnell certainly notes the quixotic nature of presidential power, he does not tie the vicissitudes of power to the president's desire to control the courts. Nor does the more general insulation theory of judicial independence recognize this sort of dynamic. Indeed, according to this familiar logic, it is precisely when presidents are losing power that they should be most inclined to imbue courts with independence.⁶

Turning the insulation logic on its head, this paper builds on work by Aydin to explore how politicians' uncertainty about their future is precisely what motivates judicial manipulation.⁷ Whereas Aydin emphasizes the absence of public backlash against judicial manipulation, the key idea explored here hinges on the recognition that in developing democracies politicians' fate is partly endogenous to who controls the courts.⁸ Thus, if capturing the court can help to extend the incumbent's political lifespan, then the calculus shifts from one in which an insecure incumbent promotes judicial independence as a means of limiting the next government, to one in which the incumbent instead subjugates the current court in order shore up her own government.

Consider some of the most egregious examples from contemporary Latin America. In 1991, Peruvian President Alberto Fujimori staved off a looming corruption inquiry into the first lady's inner circle and neutralized threats by the legislative opposition to remove him under the "moral incapacity" clause of the constitution by carrying out an autogolpe that closed both the legislature and the Supreme Court. Six year later, judges who dared to rule against Fujimori's third re-election bid were duly impeached and the Constitutional Tribunal was rendered inquorate.

More than twenty-five years later, Venezuela's embattled president, Nicolás Maduro, has carried out a slightly different version from the same playbook. Shortly before the new opposition

legislature was seated in 2014, Maduro packed an already loyal court with 13 new members. After striking down multiple pieces of opposition legislation, the Court then launched its own coup by dissolving the opposition-led National Assembly and temporarily seizing the legislature's powers. In the midst of mass protests and international outcry, Maduro then forced the Court to recant; subsequently, the Court has banned the opposition from the upcoming presidential elections and continued to jail political opponents and business executives in oil and banking.⁹

Elsewhere, and often under the double-speak of “protecting” human rights, loyal judges in countries such as Nicaragua, Honduras and Bolivia have shredded constitutional terms limits enabling incumbent presidents to remain in power, while also green-lighting investigations of the political opposition. Meanwhile, in Ecuador, judges have been repeatedly drawn into executive-legislative battles over the president's fate. Under President Gutiérrez for instance, the president blatantly used the Supreme Court as a bargaining chip to cling to power. Facing a series of mounting criminal charges in 2004, Gutiérrez replaced all thirty-one judges on the Supreme Court as part of a quid pro quo deal whereby the new court would drop existing charges against the PRE's leader, former President Abdalá Bucaram, in exchange for the PRE blocking attempts to impeach Gutiérrez. In this case, however, the plan backfired spectacularly and Gutiérrez was swiftly removed from power.

The remainder of this paper lays out this “kill or be killed” logic of judicial manipulation and offers original systematic evidence consistent with this novel approach. Part one elaborates the flipside of the logic of insulation to establish a new theoretical framework for linking presidential and judicial insecurity. Part two derives four testable hypotheses and discusses the data used to test them. Part three presents two sets of results consistent with the overarching theoretical framework, including an instrumental variable analysis that enables us to explore the causal link between

protests aimed at the government and the government's attempts to manipulate the courts. Part 4 concludes by exploring the broader implications of our argument.

Manipulating to Survive

Conventional wisdom holds that political insecurity begets judicial independence. Consider the well-known insurance theory of judicial independence. According to its proponents, vulnerable incumbents look to independent courts both to afford protection against future majorities overturning their policies¹⁰ and to shield them against future prosecutions once they exit power.¹¹ Provided that politicians' time horizons are sufficiently long and that parties expect to alternate with one another in office indefinitely, judicial independence becomes self-sustaining.¹² Yet, as this section argues, extant insurance theories of judicial independence often miss an important feature of political insecurity. That is, in many institutional contexts whether incumbents are vulnerable to losing power is at least partly endogenous to whether they control the courts.

Across contemporary Latin America, the threat of military coups has receded in the last three decades, but political instability continues to plague presidents. Since the mid-1980s, more than twenty elected Latin American leaders have been forced out of office through impeachment and the like, and scores more have been credibly threatened with early removal.¹³

By the standard insurance theory, independent courts should be especially attractive to presidents who face this sort of insecurity. Not only are presidents who exit irregularly frequently replaced by political opponents, but they are also at a much higher risk of being put on trial after leaving power.¹⁴ To understand why, then, an imperiled president might instead opt to weaken the court's independence, imagine the trade-off as follows: foregoing control of the court now improves her post-tenure future; whereas controlling the court now improves her

chances that she will remain in power for the foreseeable future. Although it is straightforward to posit that staying in office is paramount for any incumbent—this is, after all, a bedrock assumption of political science—standard insurance theories have long overlooked the key role that courts play in helping leaders achieve this basic primary goal.

This omission, as Aydin has pointed out is particularly problematic for understanding the role of courts in the developing world.¹⁵ As she succinctly puts it, “In the developing democracies...the costs of pressuring courts are lower, but the benefits are higher.”¹⁶ Perhaps nowhere is this more apparent than contemporary Latin America. From deciding whether to sanction the impeachment of a sitting president, to prosecuting and, hence weakening, political opponents, to deciding the legality of running for re-election, there is no question but that courts in the region have been and remain pivotal in determining whether presidents stay in power.

Bolivian President Evo Morales provides a perfect case in point. Coming on the heels of a decade of political instability which saw the ouster (or attempted ouster) of multiple predecessors, in 2005 Morales quickly realized that he needed to take control over the courts to help thwart challenges both to his policies and to his grip on office. As Castagnola and Pérez-Liñán describe, almost immediately after Morales took office, justices on both the Supreme Court and the Constitutional Tribunal were pressured to tender their resignations.¹⁷ By purging the opposition’s judiciary, Morales ultimately succeeded in foreclosing one of the opposition’s most important tools for challenging his efforts to control the Constituent Assembly. More than a decade later, Morales’ grip on the courts seemingly continued to pay off. Following his narrow defeat in a 2016 popular referendum on whether to lift the two-term limit on the presidency as established by the 2009 Bolivian Constitution, the Constitutional Court extended Morales’ political future by overturning the results and ruling that term limits violated human

rights. Standing for re-election in 2019, Morales was only forced to resign in the wake of protests mass following allegations of electoral fraud, in which his opponent's 10-percentage point lead was mysteriously reversed twenty-four hours after election officials stopped releasing information.¹⁸

More generally, if political insecurity is endogenous to judicial control, then the incumbent's calculus shifts. Rather than use courts to mitigate the costs of being out of power, she uses courts to mitigate the risks of losing power. Whereas the former strategy necessitates judicial independence, the latter dictates dependence. Compared to standard insurance models, the fundamental prediction that emerges out of the survivalist framework is that greater political insecurity thus triggers greater judicial insecurity. Judges become the victims of political uncertainty, not its beneficiaries.

Research Design and Hypotheses

Anecdotes lending plausibility to the survivalist account of judicial manipulation abound, but assessing whether presidential insecurity systematically affects judicial manipulation (either negatively or positively) requires a different approach. Here, we begin by simply examining whether the factors that are correlated with a heightened risk of presidential instability also heighten the risk of judicial instability. To address the fact that observational analyses necessarily run the risk of omitted variable bias and endogeneity, which may bias our estimates, we then estimate each of our core models with an instrumental variable approach described below.

Latin America has long been subjected to repeated cycles of institutional failure and weakness.¹⁹ For more than a decade now scholars of the region have added presidential failures to the formidable list of pernicious problems demanding explanation. From this growing literature, four core explanatory factors stand out: (1) protests, (2) past instability, (3) presidential power, and

(4) divided government.²⁰ Building upon the theoretical discussion of the previous section, here we take each factor in turn and show how it maps on to testable hypotheses about the effects of heightened political insecurity on judicial manipulation.

Protests. Since the end of the Cold War, mass protests —rather than military coups— have been a key determinant in forced presidential exits. Triggered by controversial economic policies, and/or corruption scandals, over the last four decades millions of Latin Americans have taken to the streets to demand their president’s ouster. Hochstetler shows that in many instances such protests made the difference in whether a congressional challenge to remove a sitting president was successful or not.²¹ Writing about Brazil in 1992, she notes that “the driving force of the fear of punishment from voters was especially evident in Collor’s impeachment in Brazil, where looming subnational election sealed his fate. Members of Congress not only voted to impeach, but hurried to do so before the election.”²² A similar dynamic was arguable at play in the more recent impeachment of Dilma Rousseff in 2016, which was preceded by some of the largest protests of the era. As well, quantitative analyses of early or forced presidential exits have largely confirmed the importance of protests in destabilizing Latin American leaders.²³

In terms of the implications for judicial manipulation, our theory suggests that if protests put presidents at risk then they should also make it more likely that leaders scrambling to stay in power will try to mitigate the threat from the streets by tilting the institutional environment in their favor. Stated as a basic hypothesis,

H1: Mass protests against the government should increase the likelihood that the government will engage in judicial manipulation.

Past Instability. Although we can never directly assess leaders' perceptions of risk, qualitative evidence suggests that previous bouts of presidential instability have indeed heavily influence subsequent leaders. More generally, we know that individuals are not only subject to strong negativity biases, but also tend to over-infer probabilities from short sequences of events.²⁴ If this is true, then past instability suffered by previous leaders in a given country may indeed influence a current leader's assessment of being ousted, independent of the current risk factors. Consider former Ecuadorian President Rafael Correa. Coming to power in 2007 after a string of his predecessors had been prematurely ousted, Correa was determined not to let the same fate befall him. As the former President Rosalia Arteaga, who herself had been deposed by Congress after holding the presidency a mere three days, described:

He [Correa] was so afraid being overthrown, that was his biggest fear, because he didn't have anyone in Congress. One thing I have to give Correa, he has a great ability ... the congressional tribunal was perfectly managed, a person who did not have even one representative, achieves this...²⁵

More generally, we might imagine that contexts where previous presidents have frequently lost power, their successors could have an inflated perception of their own vulnerability and thus all the more reason to seek to curb courts in their favor. Stated as testable hypothesis,

H2: Past presidential crises involving previous administrations, should increase the likelihood that the current government will engage in judicial manipulation.

Partisan and Formal Presidential Powers. Much of the literature finds that minority presidents are more vulnerable to premature ousters than presidents who enjoy a legislative

majority.²⁶ A new line of research, however, has shown that the purported effects of divided government on presidential instability are instead conditional on the president's formal constitutional powers.²⁷ Applying the logic of crisis bargaining models²⁸ to separation of powers presidential systems, Helmke posits that greater executive powers increase the stakes to the opposition of being out of government. Although the opposition's incentives to attempt to oust incumbent presidents thus always increase in formal presidential powers, generally the opposition can only pose a credible threat if the president is in the legislative minority.

Drawing on these insights about how the partisan and institutional environment jointly shapes presidential risk, here we extrapolate two counter-intuitive hypotheses about how institutional and partisan factors affect judicial manipulation. Starting with the president's constitutional power and the observation that increasing the president's formal powers puts her at greater risk, then, per our reasoning above, it should also give her greater incentive to try to capture the courts. Notice, that this expectation runs directly counter to the implication of the standard delegative democracy arguments made by O'Donnell and others.²⁹ In those familiar arguments whereby presidents manipulate courts simply to expand their policy making powers, we would expect that, all else equal, constitutionally weaker presidents would engage in more manipulation. Here, however, in light of the legislative-executive bargaining model described above, the survivalist mechanism leads to just the opposition prediction: judicial manipulation is more likely carried out by presidents who already have such formal powers; rather than advancing the leader's policy interests or satisfying some underlying taste for autocratic rule, capturing the courts serves a more fundamental goal of clinging to power.

From the standpoint of the mainstream literature on separation of powers systems, the effects of divided government on judicial manipulation are also counter-intuitive. Whereas

standard spatial models predict that courts face the greatest threat when government is unified,³⁰ here the theory of presidential risk suggests an important twist. Although unified governments surely give presidents more ability to both credibly threaten and carry out most types of legally sanctioned manipulation, the survivalist account suggests that the president's incentives to manipulate only increase when she is in the minority, and thus at a greater risk of forced removal. Simply put, if ameliorating presidential risk underlies judicial manipulation, the effects of divided government can effectively cut in opposite directions. Divided government increases the president's need to engage in judicial manipulation, just as it limits her capacity to do so. Hence, from the standpoint of the survivalist logic, we expect an overall null effect. Restating these arguments as our final two hypotheses:

H3: Increasing the president's constitutional powers should increase the likelihood that the government will engage in judicial manipulation.

H4: Increasing the president's seat share will have no effect on the likelihood that the government will engage in judicial manipulation.

The Data

To explore whether the empirical patterns of judicial manipulation are consistent with the hypotheses gleaned from the survivalist logic, we draw on data contained in Helmke's *Inter-Branch Crisis in Latin American Dataset*.³¹ These data span eighteen Latin American countries (Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela) over a period of twenty-four years (1985-2008). The specific coding rules for identifying such judicial crises are detailed in Helmke.³² Based on those criteria, we identify

thirty-three distinct attempts initiated by the executive to change the majority composition of a Latin American peak court (e.g. Supreme Court and/or Constitutional Tribunal) to favor the incumbent government. Of these twenty-seven attempts, fully twenty-five succeed in altering the court's composition in the government's favor, or in rendering an opposition court inquorate. Because our aim is to explain what drives presidents to engage in judicial manipulation, the dataset also necessarily contains all "non-cases" for each unit of analysis (administration-year) in which a judicial crisis did not occur. Altogether, we find that about a third of all administrations engage in judicial manipulation (thirty-three instances out of 111 administrations), which constitutes about 7% of all observations in the ICLA dataset (thirty-three of 472).

Table 1 **Judicial Crises in Latin America, 1985-2008**

Country	Administration	Year	Success
Argentina	Alfonsín	1987	no
	Menem	1989	yes
	Duhalde	2002	no
	N Kirchner	2003	yes
Bolivia	Paz Estenssoro	1987	no
	Paz Zamora	1990	yes
	Sanchez de Lozada	1993	yes
	Morales	2006	yes
	Morales	2007	yes
	Morales	2008	yes
Chile	Aylwin	1991	no
	Aylwin	1992	yes
	Frei	1997	yes
	Frei	1999	no
Ecuador	Cordero	1985	yes
	Duran-Ballen	1994	no
	Bucaram	1996	yes
	Alarcon	1997	yes
	Gutierrez	2003	yes
	Gutierrez	2004	yes
	Gutierrez	2005	yes
Correa	2007	yes	
Guatemala	Serrano	1993	yes
	Carpio	1993	yes
Nicaragua	Bolanos	2004	no
Paraguay	Wasmosy	1993	yes
	Duarte	2003	yes
Peru	Fujimori	1991	yes
	Fujimori	1997	yes
Venezuela	CAP	1992	yes
	Chávez	1999	yes
	Chávez	2002	no
	Chávez	2003	Yes

In line with the discussion from the previous section, we operationalize the presidential threat environment using the following proxy measures. To capture the idea that protests increase the likelihood of presidential instability,³³ we construct the variable *Protest* based on anti-governmental protest data available from Banks.³⁴

Past Removals exploits the ICLA dataset's coding of presidential crises, which involve legislative attempts to remove sitting presidents. Here, we construct a count variable that records the number of times that previous presidents in a given country have been threatened with removal, or removed early from office for each administration. The variable ranges from zero to seven, with a mean of ninety-nine hundredths.

The variable *Presidential Power* is based on Aleman and Tsebelis's comprehensive cross-national measures of the president's formal institutional powers.³⁵ The variable ranges from a low score of eighteen for Mexico, a country widely considered to have one of the weakest constitutional presidencies,³⁶ to a high score of thirty-three for Ecuador, a country commonly viewed as having one of the strongest constitutional presidencies in Latin America.³⁷ The dummy variable, *Divided government*, indicates whether or not the president's party lacks the majority of seats in the lower chamber of Congress.³⁸ In fully 61% of all observations, presidents were in the minority.

We also include three control variables, *Term*, *Previous Manipulation*, and *Judicial Trust*. *Term* is a basic count variable that ranges from zero to six and captures the year since the start of each administrations' time in office. To the extent that presidents may either seek to pack courts preventively, or may be responding to an emergent threat against them, we expect either a negative or null effect. The variable *Previous Manipulation* is a dummy variable coded as one for administrations that inherit a court manipulation by their predecessor and zero otherwise. This

enables us to control for the alternative hypothesis that successors will simply be more likely to manipulate courts if their predecessors have done so, regardless of their own insecurity. The third control, *Judicial Trust*, taps into to what Vanberg³⁹ has broadly characterized as the exogenous approach toward explaining judicial authority. In this well-known line of research, politicians avoid manipulation or any other assaults on judicial independence not because of the benefits independent courts bestow, but because of the costs politicians might incur from the public were they to violate it. Building on this basic supposition, a large comparative judicial political literature contends that courts that enjoy such legitimacy are relatively safer from political attacks than courts that do not.⁴⁰ Here, we control for this influence by constructing the lagged variable, *Judicial Trust* from the available LatinoBarometro public opinion surveys.⁴¹

Table 2 The Correlates and Effects of Presidential Instability on Judicial Instability

	Model 1	Model 2	Model 3	Model 4
Protests	0.152** (0.0736)	0.245** (0.112)		
Protests_IV			1.957* (1.124)	2.170* (1.259)
Past Presidential Crises	0.264*** (0.0795)	0.367** (0.171)	-0.0834 (0.209)	0.148 (0.283)
Presidential Power	0.145** (0.0607)	0.135* (0.0802)	0.206*** (0.0740)	0.188* (0.105)
Divided Government	-0.396 (0.415)	-1.984** (0.913)	0.0976 (0.531)	-1.102 (1.409)
Term	-0.376*** (0.140)	-0.484 (0.394)	-0.292* (0.165)	-0.413 (0.416)
Previous Manipulation	-1.609** (0.647)	-2.291*** (0.391)	-1.935*** (0.713)	-2.679*** (0.508)
Judicial Trust (lagged)		-0.0135** (0.00675)		-0.00814 (0.00811)
Constant	-5.530*** (1.657)	-3.448 (2.786)	-9.321*** (3.131)	-8.323* (4.674)
Observations	454	207	454	207
χ^2	116.3	139.6	126.6	187.5

Standard errors in parentheses. * p<.1, ** p<.05, *** p<.01. Models 1 and 2 are logit regressions with standard errors clustered at country level. Models 3 and 4 present the second stage results of instrumental variable estimations. See appendix for the first stage results.

The baseline logit model (Model 1- Table 2) regresses judicial manipulation on the four key risk variables, *Protest*, *Past Removal*, *Presidential Power*, and *Divided Government*, as well as controls for term and previous judicial manipulation.⁴² The results comport with each and every one of the core four hypotheses derived from the survivalist framework. Specifically, we find that *Protests*, *Presidential Power*, and *Past Removals* all significantly increase the likelihood of a judicial crisis, whereas there is no significant effect of *Divided Government*. Holding each of the

other independent variables at their means, the marginal effects are also substantial. For example, in the absence of *Protests* the likelihood of judicial manipulation is about 4% whereas when *Protests* are at their peak the likelihood of judicial manipulation climbs to 14%. Likewise, increasing the president's formal powers from the lowest level (e.g. Mexico) to the highest (e.g. Ecuador) raises the odds of judicial manipulation from around 2% to 13%. Meanwhile, among administrations in which no predecessors faced a presidential crisis, the likelihood of judicial manipulation is around 4% and rises to over 30% for administrations in which multiple predecessors were prematurely ousted.

Model 2 incorporates the third control, *Judicial Trust* (lagged), for which we have data for less than of the observations (207/454). Despite fewer cases, the results for three of the four core independent variables, *Protest*, *Past Removal*, and *Presidential Power*, remain intact. However, the negative coefficient for *Divided Government* is now just significant, indicating that the separation of powers effect may be swamping the immediate risk factors associated with minority presidents. Putting this together with the survivalist mechanism, this suggests a more preventive strategy in which leaders potentially at high risk tilt courts to their advantage when they can, as opposed to a throwing a Hail Mary pass by packing courts after leaders are in a weakened position. Latin American leaders, in other words, tend to operate more like Evo Morales than Lucio Gutierrez when it comes to judicial manipulation.

With respect to the three control variables, the results in Models 1 and 2 are mixed. On the one hand, and fully in line with the exogenous approach to judicial independence, public confidence in Latin American Court's does appear to exert a shield-like protection against manipulation. This result is all the more interesting in light of recent experimental evidence suggesting that publics are willing to punish candidates who compromise judicial independence,

but only up to a certain point.⁴³ Here, however, politicians appear to act as though the constraints of public support matter. On the other hand, we find only limited support for the idea that manipulation should be less likely over the course of the president's term. Model 1 is consistent with the preemptive strike logic, however, the results are not robust in Model 2. Nor is there any support for the view that manipulation is primarily retaliatory. In fact, the coefficient for *Previous Manipulation* indicates just the opposite: Courts that were manipulated by the previous administration are significantly less likely to be manipulated by the subsequent administration, a finding that we discuss more below.

To address the fact that observational analyses carry the risk of omitted variable bias, in the remainder of this section we re-estimate our models using an instrumental variable approach. Specifically, to address the concern that one of our key explanatory variables, *Protests*, is either endogenous to judicial manipulation (i.e. the president's attempt to manipulate the court triggers street protests as in the case of Gutierrez in Ecuador), or that protests and judicial manipulation are caused by some additional factor that we have not modeled, we propose the following instrument. Building on the work of Campello and Zucco Jr.⁴⁴ who use an index based on all commodity prices to instrument for presidential approval, we develop a more refined measure of weighted commodity prices for up to 45 commodities exported by each Latin American country in our dataset.⁴⁵ In our case, we then use this new Core Commodity Index (CCI) as an instrument for *Protests*.

As in Campello and Zucco Jr.⁴⁶ we exploit the fact that commodity prices are exogenous to any domestic variables, yet strongly affect exposed Latin American economies. While it may be debated the degree to which and administration's domestic policies can change a country's reliance on commodities, presidents have no room to change their dependence on commodities nor affect

the price of commodities in the short run. Thus, the CCI provides an ideal instrument for our purposes that is at once exogenously generated and strongly correlated with the predecessor's political fortunes while in office. Whether commodity prices rose or fell should have no bearing on a leader's decision to manipulate the courts except through the mechanism of political risk to the leader that we articulate.

Our second stage results based on this instrumental variable approach are captured in models 3 and 4. The first stage estimates are consistent with our expectations that commodity prices have a strong negative effect on *Protests* (see appendix). As we can see *Protests_IV* also continue to exert the expected effects on judicial manipulation. In addition, the effects of *Presidential Power* and *Previous Manipulation* remain robust in both specifications, although note that *Past Presidential Crises* no longer appear to influence the likelihood of judicial manipulation.

Discussion

Most theories of judicial politics are built around explaining the puzzle of judicial independence. This paper instead theorizes explicitly about the conditions under which politicians are prone to manipulate their courts. By arguing that courts can partly endogenously shape politicians' fate at the hands of legislative opponents, we argue that greater political insecurity leads presidents to gut judicial independence, not shore it up. Using an original dataset on inter-branch crises in contemporary Latin America, the empirical evidence is largely consistent with this new approach. Specifically, each of the four novel hypotheses linking presidential insecurity to judicial instability was largely borne out in both the standard regression analysis as well as in the instrument variable analysis.

More generally, this paper suggests two sets of broader implications. Recognizing that institutional crises are inter-connected cuts against the older tendency in the literature to treat these

phenomenon along parallel tracks; with one literature on presidential crises and another on judicial politics. Rather, constitutional hardball in all of its manifestations should be studied under a unified theoretical framework.⁴⁷

In this spirit, this paper shows one way in which political instability (or its anticipation) cascades across institutions and over time. The overarching lesson is that Latin America's new form of institutional instability⁴⁸ not only leaves presidents vulnerable, but also threatens the very institutions that safeguard basic individual and human rights. As such, the idea that this new type of instability is not about regime change is not quite right: coups may be a thing of the past, but the piecemeal process of democratic erosion is certainly at work. When courts are captured, political enemies are jailed, protesters are killed, and the press is stripped of its ability to hold governments accountable. Recent events in Venezuela and Nicaragua make this lesson all too clear.

Second, the theoretical story developed here also potentially dovetails with the literature on strategic judicial decision-making. Scholars, for example, have argued that institutional instability prompts judges to strategically defect from weak governments in order to curry favor with incoming governments.⁴⁹ If this is right, it makes all the more sense for vulnerable governments to try to manipulate courts when and where they can. This is so for at least two reasons. In the short term, seizing control over the court may help tilt the playing field in favor of the incumbent, thus endogenously lowering the chances that she will be weakened. And, the more judges are viewed as pure cronies, the less plausible strategic defection becomes. In other words, under some conditions, it may be that governments actually benefit from having judges who are unable to signal their independence. To explore fully the implications of this logic for judicial behavior, however, we need to develop a new game theoretic model that formally endogenizes the

government's fate with respect to the choices judges make. This remains a task for future research.

Appendix

Table A1 First stage Regression for Protests

	Model A1	Model A2
DV: Protests		
Core Commodity Index (CCI)	-0.0154** (0.00575)	-0.0256*** (0.00754)
Past Presidential Crises	0.203*** (0.0601)	0.173** (0.0799)
Presidential Power	-0.0515* (0.0256)	-0.0467 (0.0343)
Divided Government	-0.331* (0.159)	-0.694** (0.250)
Term	0.0635* (0.0346)	-0.139* (0.0746)
Previous Manipulation	0.111 (0.190)	0.0790 (0.240)
Judicial Trust (lagged)		-0.00236 (0.00386)
Constant	3.480*** (0.867)	4.635*** (1.159)
Observations	454	207
R^2	0.079	0.164

Standard errors clustered at country level in parentheses. * p<.1, ** p<.05, *** p<.01. Models A1 and A2 are OLS regression analyses.

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⁴⁶ Campello and Zucco Jr., 2016.

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